

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:12-CR-00068-RJC-DSC

USA

v.

JONATHAN D. DAVEY (1)

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ORDER

THIS MATTER is before the Court upon the defendant's pro se Motion for to Receive Audio Recordings from Defendant's Jury Trial. (Doc. No. 295). The defendant asks the Court to order the court reporter to provide a certified copy of recordings from his trial based on alleged errors in the transcripts, including statements made throughout the trial not matching the transcripts, statements by the Court showing bias not contained in the transcripts, and content from sidebars missing from the transcripts. (*Id.* at 1). The defendant claims the recordings are necessary for his motion under 28 U.S.C. § 2255.

The Court Reporter Act requires verbatim recording of court proceedings by shorthand, mechanical, electronic sound recording, or other approved means. 28 U.S.C. § 753(b). Such notes must be preserved as public records for at least ten years and available for inspection during clerk's office hours by any person. *Id.* Where audiotapes merely back up a court reporter's stenographic record, they are not considered judicial records, but rather the personal property of the reporter. *United States v. Davis*, 648 F. App'x 295, 297 (4th Cir. 2016) (citing *Smith v. U.S. Dist. Court Officers*, 203 F.3d 440, 442 (7th Cir. 2000)). Accordingly, a defendant does not have a right of access to such back-up recordings absent a showing sufficient "to distrust the accuracy of the stenographic transcript." *Id.* Courts have repeatedly held that a defendant's assertions of error are insufficient to overcome the statutory presumption of accuracy

of a certified transcript. See e.g. United States v. Smith, Case No. 3:08-cr-32, 2013 WL 12143966, at *1 (E.D. Va. Apr. 8, 2013) (collecting cases), aff'd, 546 F. App'x 195 (4th Cir. 2013), cert. denied, 134 S. Ct. 1529 (2014).

Here, the court reporter certified pursuant to 28 U.S.C. § 753 that the trial transcript is “a true and correct transcript of the stenographically reported proceedings” in this matter, (Doc. No. 130 at 192), and the stenographic notes are available for inspection. Accordingly, the defendant is not entitled to any audio recordings that may have been made during the trial.

IT IS, THEREFORE, ORDERED that the defendant’s pro se Motion for to Receive Audio Recordings from Defendant’s Jury Trial, (Doc. No. 295), is **DENIED**.

Signed: October 29, 2018

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

